

QII

1 LOIS J. SCHIFFER
Assistant Attorney General
2 Environment and Natural Resources Division
ROBERT D. BROOK
3 Environmental Enforcement Section
U.S. Department of Justice
4 P.O. Box 7611
Washington, D.C. 20044
5 Telephone: (202) 514-2738
6 NORA M. MANELLA
United States Attorney
7 LEON W. WEIDMAN
Chief, Civil Division
8 MONICA L. MILLER
Assistant United States Attorney
9 300 North Los Angeles Street
Los Angeles, California 90012
10 Telephone: (213) 894-4061
11 NANCY J. MARVEL
ARTHUR HAUBENSTOCK
12 U.S. Environmental Protection Agency, Region IX
San Francisco, California 94105
13 Telephone: (415) 744-1355
14 DANIEL E. LUNGREN
Attorney General of the State of California
15 THEODORA BERGER
Assistant Attorney General
16 DENNIS A. RAGEN
Deputy Attorney General
17 110 West A Street, Suite 1100
San Diego, California 92101
18 Telephone: (619) 645-2016
19 Attorneys for Plaintiffs the United States and California

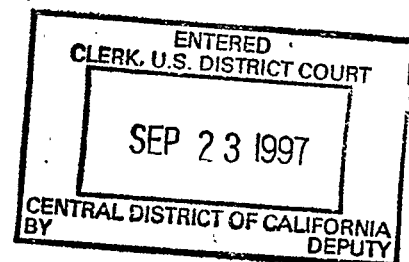
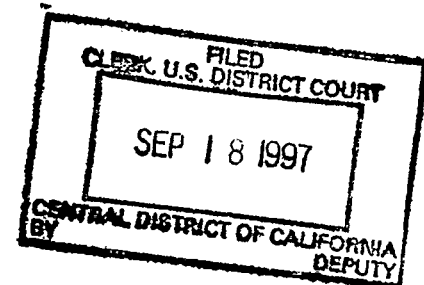
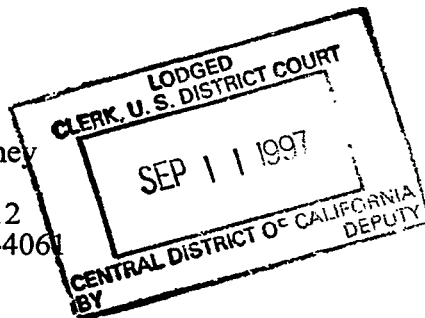
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

22 UNITED STATES OF AMERICA,)
THE STATE OF CALIFORNIA, and)
23 THE CALIFORNIA HAZARDOUS)
SUBSTANCE ACCOUNT,)
24)
Plaintiffs,)
25)
v.)
26)
GSF ENERGY, L.L.C., and AIR)
27 PRODUCTS AND CHEMICALS)
INC.,)
28 Defendants.)

MRP
CV 97-5440 JGD(Mcx)

SIXTH PARTIAL
CONSENT DECREE

THIS CONSTITUTES NOTICE OF ENTRY
AS REQUIRED BY FRCP, RULE 77(d).



SIXTH CONSENT DECREE

TABLE OF CONTENTS

I.	Jurisdiction	5
II.	Parties Bound	5
III.	Site Background	6
IV.	Definitions	9
V.	Denial of Liability	14
VI.	General Provisions	14
VII.	Payments by Defendants	16
VIII.	Priority of Claims	18
IX.	Dispute Resolution	18
X.	Stipulated Penalties	21
XI.	Covenants Not to Sue by Plaintiffs	24
XII.	Covenants by Defendants	28
XIII.	Effect of Settlement; Contribution Protection	30
XIV.	Access to and Retention of Records and Information	32
XV.	Notices	35
XVI.	Modification	36
XVII.	Lodging and Opportunity for Public Comment	37
XVIII.	Retention of Jurisdiction	37
XIX.	Representative Authority & Service	38
XX.	Effective Date	39
XXI.	Termination and Satisfaction	39
XXII.	Section Headings	39
XXIII.	Counterparts	39
//		
//		

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

WHEREAS, Plaintiffs allege that the OII Site is a facility as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

1 WHEREAS, Plaintiffs allege that the Defendants are persons,
2 as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

3 WHEREAS, Plaintiffs allege that in October 1979, Defendant
4 GSF (then called NRG NuFuels, Inc.) installed a landfill gas
5 collection system and plant at the OII Landfill, which it
6 operated until March 1986.

7 WHEREAS, Plaintiffs allege that Defendant GSF removed
8 liquids from landfill gas at its plant at the OII Site, and that
9 GSF injected these liquids into the landfill.

10 WHEREAS, Plaintiffs allege that Defendant GSF added
11 hazardous substances, as defined by Section 101(14) of CERCLA, 42
12 U.S.C. § 9601(14), and California Health and Safety Code §§ 25316
13 and 25317, to some of the liquids GSF removed from landfill gas,
14 and then injected the resulting mixture into the landfill in an
15 effort to increase landfill gas production.

16 WHEREAS, Plaintiffs allege that some or all of the liquids
17 GSF injected into the landfill were hazardous substances as
18 defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and
19 California Health and Safety Code §§ 25316 and 25317.

20 WHEREAS, Plaintiffs allege that Defendant GSF was an
21 "operator" of certain facilities at the Site at the time of
22 disposal of hazardous substances at the landfill, as defined in
23 Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

24 WHEREAS, Plaintiffs allege that wastes, and constituents
25 thereof, generated by GSF and sent to and disposed of at the
26 Site, or arranged or accepted by GSF for transport and disposed
27 of at the Site, are "hazardous substances," as defined in Section

28 //

1 101(14) of CERCLA, 42 U.S.C. § 9601(14), and California Health
2 and Safety Code §§ 25316 and 25317.

3 WHEREAS, Plaintiffs allege that Air Products generated a de
4 minimis quantity of wastes, approximately 17,640 gallons, which
5 Air Products sent to and disposed of at the Site, or arranged or
6 accepted for transport and disposed of at the Site, and that such
7 wastes and constituents thereof are "hazardous substances," as
8 defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and
9 California Health and Safety Code §§ 25316 and 25317.

10 WHEREAS, Plaintiffs allege that the past, present, and
11 potential migration of hazardous substances at the Site
12 constitute actual and threatened releases, as defined in Section
13 101(22) of CERCLA, 42 U.S.C. § 9601(22), and California Health
14 and Safety Code §§ 25320 and 25321, and further allege that the
15 Defendants are liable under Section 107(a) of CERCLA, 42 U.S.C.
16 § 9607(a), and California Health and Safety Code § 25360.

17 WHEREAS, EPA has notified the State of California pursuant
18 to the requirements of Section 106(a) of CERCLA, 42 U.S.C.
19 § 9606(a), and EPA has provided the State with an opportunity to
20 participate in and to be a party to this settlement.

21 WHEREAS, pursuant to Sections 121 and 122 of CERCLA, 42
22 U.S.C. §§ 9621 and 9622, Plaintiffs and Defendants have each
23 stipulated and agreed to the making and entry of this Consent
24 Decree prior to the taking of any testimony, and in full
25 settlement of the claims raised in the Complaint.

26 WHEREAS, the United States, the State and the Defendants
27 have agreed upon a settlement pursuant to which the Defendants

28 //

1 agree to make payments to the EPA and the State for resolution of
2 the claims set forth in the Complaint filed in this action.

3 WHEREAS, the Parties recognize, and the Court by entering
4 this Consent Decree finds, that the Parties enter into this
5 Consent Decree in good faith, in an effort to avoid expensive and
6 protracted litigation, and that this Consent Decree is fair,
7 reasonable, and in the public interest.

8 NOW THEREFORE, it is ORDERED, ADJUDGED, AND DECREED as
9 follows:

10
11 **I. Jurisdiction**

12 The Court has jurisdiction over the subject matter of this
13 action and the signatories to this Consent Decree pursuant to 28
14 U.S.C. §§ 1331, 1345, and CERCLA, 42 U.S.C. §§ 9606, 9607, and
15 9613(b), and supplemental jurisdiction over the claims arising
16 under the laws of California pursuant to 28 U.S.C. § 1367.

17 Solely for the purposes of this Consent Decree and the underlying
18 Complaint, the Defendants, Air Products and GSF, waive service of
19 summons and agree to submit to the jurisdiction of this Court and
20 to venue in this District. The Defendants shall not challenge
21 the Court's jurisdiction to enter and enforce this Consent
22 Decree.

23
24 **II. Parties Bound**

25 This Consent Decree applies to and is binding upon the
26 United States of America, the State, the California Hazardous
27 Substance Account, and the Defendants and their successors and
28 assigns. Any change in ownership or corporate status of a

1 Defendant, including, but not limited to, any transfer of assets
2 or real or personal property, shall in no way alter such
3 Defendant's responsibilities under this Consent Decree.
4

5 **III. Site Background**

6 The following is a summary of the Site background as alleged
7 by the United States and the State which, for the purposes of
8 this Consent Decree, the Defendants neither admit nor deny.

9 A. The Operating Industries, Inc. landfill is a 190-acre
10 facility located at 900 Potrero Grande Drive, Monterey Park,
11 California. The landfill operated from 1948 through 1984. Over
12 the course of its operation, the landfill accepted industrial
13 solid, liquid and hazardous wastes, as well as municipal solid
14 waste. Wastes accepted by the landfill include hazardous
15 substances as defined in Section 101(14) of CERCLA, 42 U.S.C.
16 § 9601(14), and California Health and Safety Code §§ 25316 and
17 25317.

18 B. The Site is located on the southwestern flank of the La
19 Merced hills (also called the Montebello hills), and is divided
20 by California Highway 60 (Pomona Freeway), which runs roughly
21 east-west through the Site, dividing it into a 45-acre North
22 Parcel and a 145-acre South Parcel.

23 C. The Site was proposed for inclusion on the National
24 Priorities List ("NPL") in October 1984, and was subsequently
25 placed on the NPL in May 1986, in accordance with Section
26 105(a)(8) of CERCLA, 42 U.S.C. § 9605(a)(8), as set forth at 40
27 C.F.R. Part 300, Appendix B.

28 //

1 D. The contaminants found at the Site include hazardous
2 substances as defined by Section 101(14) of CERCLA, 42 U.S.C.
3 § 9601(14), and California Health and Safety Code §§ 25316 and
4 25317.

5 E. There have been releases of hazardous substances from
6 the Site, and the Site poses numerous threats to human health and
7 the environment. The population in proximity to the Site
8 includes the nearby residents of the City of Montebello and the
9 City of Monterey Park, those who travel on the portion of the
10 Pomona Freeway which transects the Site, and workers in the
11 several businesses located on or near the Site.

12 F. In response to a release or a substantial threat of a
13 release of hazardous substances at or from the Site, EPA has
14 completed the Remedial Investigation ("RI"), the Feasibility
15 Study ("FS"), the Proposed Plan, and the Final Record of Decision
16 (the "Final ROD") for the Site pursuant to 40 C.F.R. § 300.430.

17 G. EPA has identified three operable units to date: Site
18 Control and Monitoring ("SCM"); Leachate Management ("LM"); and
19 Gas Migration Control and Landfill Cover ("Gas Control and
20 Cover"). The first two operable units (SCM and LM) were the
21 subject of two interim Records of Decision ("RODs"). The work
22 required by these interim RODs was the subject of two prior
23 settlements, memorialized in two partial consent decrees. The
24 first settlement is captioned United States v. Chevron Chemical
25 Co., No. CV 88 7196 (MRP)Kx, and was entered by the Court on May
26 11, 1989 (hereinafter referred to as the "first Partial Consent
27 Decree" or the "First Decree"). The second settlement is
28 captioned United States v. American Petrofina Exploration Co.,

1 No. CV 88 7196 (MRP)Kx, and was entered on September 17, 1991
2 (hereinafter referred to as the "Second Partial Consent Decree"
3 or the "Second Decree"). The two interim RODs for SCM and LM
4 terminated upon issuance of the Final ROD on September 30, 1996;
5 the Final ROD incorporates the functions previously addressed by
6 the interim RODs. A third partial consent decree, captioned
7 United States v. Chevron Chemical Co., No. CV 91-6520-MRP(Kx),
8 was entered by the Court on March 30, 1992 (hereinafter referred
9 to as the "Third Partial Consent Decree" or the "Third Decree").
10 The Third Decree addresses a portion of the work required by the
11 Record of Decision for the Gas Control and Cover operable unit
12 (hereinafter the "Gas Control and Cover ROD"). The Gas Control
13 and Cover ROD, unlike the previous two interim RODs, is a final
14 ROD and represents a significant portion of the final remedy for
15 the Site.

16 H. On November 2, 1993, EPA issued a unilateral
17 administrative order ("UAO 94-01") pursuant to Section 106 of
18 CERCLA, 42 U.S.C. § 9606, requiring certain response activities
19 at the Site in cooperation with EPA and the other persons
20 performing work at the Site.

21 I. A fourth partial consent decree resolving the alleged
22 liability of certain municipalities, transporters and the
23 California Department of Transportation for arranging for
24 disposal of solid waste was entered on April 4, 1995, captioned
25 United States v. City of Monterey Park, No. CV 94-8685 WMB (GHKx)
26 (hereinafter referred to as the "Fourth Partial Consent Decree"
27 or the "Fourth Decree").

28 //

J. A fifth partial consent decree addressing the same subject matter as the First Decree and the Third Decree, incorporating new defendants, including the recipients of UAO 94-01, was entered on July 10, 1996, captioned United States v. IT Corporation, Civil Action No. CV 96-1959 WMB (JRx) (hereinafter referred to as the "Fifth Partial Consent Decree" or the "Fifth Decree").

K. On March 7, 1997, EPA issued a unilateral administrative order ("UAO 97-02") pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606, requiring certain response activities at the Site in cooperation with EPA and the other persons performing work at the Site.

IV. Definitions

Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree, the following definitions shall apply:

A. "Air Products" shall mean Defendant Air Products and Chemicals, Inc., and its subsidiary Air Products Manufacturing Corp.

B. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq.

C. "Consent Decree" shall mean this Consent Decree.

//

1 D. "Day" shall mean a calendar day unless expressly stated
2 to be a working day. "Working day" shall mean a day other than a
3 Saturday, Sunday, or federal holiday. In computing any period of
4 time under this Consent Decree, where the last day would fall on
5 a Saturday, Sunday, or federal holiday, the period shall run
6 until the close of business of the next working day.

7 E. "Defendants" shall mean GSF and Air Products.

8 F. "EPA" shall mean the United States Environmental
9 Protection Agency and any successor departments or agencies of
10 the United States.

11 G. "Final Certification of Completion" shall mean the
12 later of the following two Certifications of Completion of
13 Remedial Action to be issued for the OII Site: (1) the issuance
14 of the Certificate of Completion as defined in Section XXV of the
15 Third Partial Consent Decree, or (2) the issuance of the
16 Certificate of Completion for the remedy required by the Final
17 ROD.

18 H. "Final Remedy" shall mean the remedies selected in the
19 Final ROD and the Gas Control and Cover ROD.

20 I. "Final ROD" shall mean the Final Record of Decision for
21 the OII Site signed by the Region IX Superfund Division Director
22 on September 30, 1996.

23 J. "First Decree" or "first Partial Consent Decree" shall
24 mean the first Partial Consent Decree for the OII Site, captioned
25 United States v. Chevron Chemical Co., No. CV 88 7196 (MRP)Kx,
26 and entered by the Court on May 11, 1989.

27 K. "Fifth Decree" or "Fifth Partial Consent Decree" shall
28 mean the Fifth Partial Consent Decree for the OII Site, captioned

1 United States v. IT Corporation, No. CV 96-1959 WMB (JRx), and
2 entered by the Court on July 10, 1996.

3 L. "Fourth Decree" or "Fourth Partial Consent Decree"
4 shall mean the Fourth Partial Consent Decree for the OII Site,
5 captioned United States v. City of Monterey Park, No. CV 94-8685
6 WMB (GHKx), and entered by the Court on April 4, 1995.

7 M. "Gas Control and Cover ROD" shall mean the Record of
8 Decision relating to the Gas Migration Control and Landfill Cover
9 operable unit at the Site, signed by the Region IX Deputy
10 Regional Administrator on September 30, 1988, as amended on
11 September 28, 1990.

12 N. "GSF" shall mean Defendant GSF Energy Inc., now named
13 GSF Energy, L.L.C.

14 O. "Interest" shall mean interest at the rate specified
15 for interest on investments of the Hazardous Substance Superfund
16 established under Subchapter A of Chapter 98 of Title 26 of the
17 U.S. Code, compounded on October 1 of each year, in accordance
18 with CERCLA § 107(a), 42 U.S.C. § 9607(a).

19 P. "LM ROD" shall mean the Record of Decision for the
20 Leachate Management operable unit, signed by the Region IX Deputy
21 Regional Administrator on November 16, 1987.

22 Q. "Matters Addressed in this Settlement" shall mean all
23 response actions taken or to be taken and all response costs
24 incurred or to be incurred by the United States, the State, or
25 any other person with respect to the Site, excepting any response
26 actions or response costs related to matters addressed by
27 Paragraph XI.B, United States' pre-certification reservations, by

28 //

1 Paragraph XI.C, United States' post-certification reservations,
2 or Paragraph XI.E, General reservations of rights.

3 R. "National Contingency Plan" or "NCP" shall mean the
4 National Oil and Hazardous Substances Pollution Contingency Plan
5 promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605,
6 codified at 40 C.F.R. Part 300, and any amendments thereto.

7 S. "OII Site" or the "Site" shall mean the "facility," as
8 that term is defined at Section 101(9) of CERCLA, 42 U.S.C.

9 § 9601(9), and shall mean the landfill located at 900 Potrero
10 Grande Drive in Monterey Park, California.

11 T. "Operation and Maintenance" or "O & M" shall mean all
12 activities required to maintain the effectiveness of the Final
13 Remedy, as required under any Operation and Maintenance Plans
14 approved or developed by EPA.

15 U. "Paragraph" shall mean a portion of this Consent Decree
16 identified by an arabic numeral or an upper case letter.

17 V. "Parties" shall mean the United States, the State, the
18 California Hazardous Substance Account, Air Products, and GSF.

19 W. "Plaintiffs" shall mean the United States, the State of
20 California and the California Hazardous Substance Account.

21 X. "RCRA" shall mean the Solid Waste Disposal Act, as
22 amended, 42 U.S.C. §§ 6901 et seq. (also known as the Resource
23 Conservation and Recovery Act).

24 Y. "Remedial Action" shall mean those activities, except
25 for Operation and Maintenance, to be undertaken to implement the
26 Gas Control and Cover ROD and/or the Final ROD, in accordance
27 with Statements of Work, the final Remedial Designs and Remedial

28 //

1 Action Work Plans and other plans approved or to be approved by
2 EPA.

3 Z. "SCM ROD" shall mean the Record of Decision for the
4 Site Control and Monitoring operable unit, signed by the Region
5 IX Deputy Regional Administrator on July 31, 1987.

6 AA. "Second Decree" or "Second Partial Consent Decree"
7 shall mean the Second Partial Consent Decree for the OII Site,
8 captioned United States v. American Petrofina Exploration Co.,
9 No. CV 88 7196 (MRP)Kx, and entered by the Court on September 17,
10 1991.

11 BB. "Section" shall mean a portion of this Consent Decree
12 identified by a roman numeral, except as otherwise specified.

13 CC. "State" shall mean the State of California solely on
14 behalf of the Department of Toxic Substances Control, the
15 successor entity to the California Department of Health Services,
16 and any successor departments or agencies.

17 DD. "State Past Response Costs" shall mean those costs
18 incurred by the State with regard to the Site during the period
19 through December 31, 1990.

20 EE. "Third Decree" or "Third Partial Consent Decree" shall
21 mean the Third Partial Consent Decree for the OII Site, captioned
22 United States v. Chevron Chemical Co., No. CV 91-6520-MRP(Kx),
23 and entered by the Court on March 30, 1992.

24 FF. "United States" shall mean the United States of
25 America.

26 GG. "Waste Material" shall mean (1) any "hazardous
27 substance" as defined in Section 101(14) of CERCLA, 42 U.S.C.
28 § 9601(14); (2) any "pollutant or contaminant" under Section

1 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any "solid waste"
2 under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any
3 "hazardous substance" under California Health and Safety Code
4 §§ 25316 and 25317.

5
6 **V. Denial of Liability**

7 The Defendants deny any and all legal or equitable liability
8 under any federal, state, or local statute, regulation, order,
9 ordinance, or common law for any response costs, damages,
10 penalties, or claims caused by or arising out of conditions at or
11 arising from the OII Site. The Defendants further allege that
12 the limited exemption regarding methane recovery and processing
13 provided by Section 124 of CERCLA, 42 U.S.C. § 9624, relieves the
14 Defendants from the liability asserted by the Plaintiffs. By
15 entering into this Consent Decree, or by taking any action in
16 accordance with it, Defendants do not admit any allegations
17 contained herein or in the Complaint, nor do Defendants admit
18 liability for any purpose, nor admit any issues of law or fact,
19 nor admit any responsibility for the alleged release or threat of
20 release of any hazardous substance into the environment. Nothing
21 in this Section shall alter the Defendants' agreement not to
22 challenge the Court's jurisdiction as set forth in Section I
23 (Jurisdiction).

24
25 **VI. General Provisions**

26 **A. Objectives of the Parties**

27 1. The objectives of the Parties in entering into
28 this Consent Decree are to protect public health or welfare or

1 the environment at the Site, to reimburse a portion of
2 Plaintiffs' response costs, and to provide funds for response
3 work at the Site.

4 2. The Parties, in entering into this Consent Decree,
5 also seek to resolve the claims of Plaintiffs against the
6 Defendants as provided in this Consent Decree.

7 B. Commitments by Defendants

8 Defendants shall make payments, as provided in this Consent
9 Decree, to the United States and the State for a portion of the
10 Plaintiffs' response costs, and to provide funds for future
11 response costs and response actions for the Site. The
12 obligations of Defendants to pay amounts owed the United States
13 and the State under this Consent Decree are joint and several.
14 In the event of the insolvency or other failure of any one
15 Defendant to implement the requirements of this Consent Decree,
16 the remaining Defendant shall complete all such requirements.

17 C. Compliance with applicable law

18 All activities undertaken by Defendants pursuant to this
19 Consent Decree shall be performed in accordance with the
20 requirements of all applicable federal and state laws and
21 regulations.

22 D. Effect on prior settlers

23 Nothing in this Consent Decree shall limit or affect the
24 rights or obligations, as set forth in the first, Second, Third,
25 Fourth, or Fifth Partial Consent Decrees, of the parties to those
26 Decrees, except as provided in Paragraph XIII.B.

27 //

28 //

VII. Payments by Defendants

A. Defendants shall pay a total of \$1.762 million pursuant to this Consent Decree. Defendants shall make payments in the amounts and to the locations set forth below:

1. Of the total amount to be paid pursuant to this Consent Decree, Defendants shall deposit \$500,000 in the OII Landfill Superfund Site Special Account to be retained and used to pay response costs and/or to conduct or finance the response action at or in connection with the Site. Defendants shall make payment for these response costs, utilizing a Special Account, by FedWire Electronic Funds Transfer ("EFT" or wire transfer), referencing the EPA Region and Site/Spill ID# 0958, and Department of Justice Case Number 90-11-2-156-I. Payment shall be made in accordance with instructions provided to the Defendants by the Financial Litigation Unit of the United States Attorney's Office for the Central District of California following lodging of the Consent Decree.

2. Defendants shall pay the remaining amount due to be paid pursuant to this Consent Decree, \$1.262 million, to the Cash Escrow Account established under the Fifth Partial Consent Decree. Payment shall be made by Electronic Funds Transfer ("EFT" or wire transfer) directed as follows:

OII Fifth Partial Consent Decree Escrow Account
City National Bank
Trust Department #92
400 North Roxbury Drive, Suite 600
Beverly Hills, California 90210
ABA Routing No.: 122016066
Account No.: 47889003
Attn: Susan G. Behning, Ass't. Vice-President

//

1 B. All payments shall be made within thirty (30) days of
2 notice of entry of this Consent Decree.

3 C. A copy of all transmittal letters shall be sent to the
4 EPA and State Project Coordinators. The addresses for the
5 Project Coordinators are set forth in Section XV (Notices).

6 D. The funds paid by Defendants pursuant to this Consent
7 Decree shall be used for the purposes and in the amounts
8 determined by EPA. The purposes include the following:

9 1. for reimbursement of State past costs and
10 oversight costs related to the Site and not paid under the first
11 or Third Partial Consent Decrees;

12 2. for reimbursement of State future response costs
13 related to the Site;

14 3. for payment to the Cash Escrow Account established
15 under the first Partial Consent Decree to be used for the
16 purposes set forth in the First Decree;

17 4. for payment to the Cash Escrow Account established
18 under the Third Partial Consent Decree to be used for the
19 purposes set forth in the Third Decree;

20 5. for costs of work to implement the Final ROD,
21 including payment of such costs to any party performing such work
22 under any consent decree signed by EPA or the State, or under any
23 administrative order issued by EPA or the State for performance
24 of such work;

25 6. for reimbursement of EPA future response costs
26 related to the Site;

27 //

28 //

1 7. for reimbursement of EPA past costs and oversight
2 costs related to the Site and not paid under the first or Third
3 Partial Consent Decrees;

4 8. for use toward payment of costs of response for
5 the Site, including payment of such costs: through an escrow
6 account set up under any consent decree signed by EPA or the
7 State or under any administrative order issued by EPA or the
8 State; through the Hazardous Substance Superfund, the California
9 Hazardous Substance Account, the California Hazardous Waste
10 Control Account, or the successor of any of them; or through a
11 site-specific account within the Hazardous Substance Superfund,
12 the California Hazardous Substance Account, the California
13 Hazardous Waste Control Account, or the successor of any of them.

14
15 **VIII. Priority of Claims**

16 The Defendants' claims against any other party for
17 contribution or indemnification of all or a portion of the cost
18 of their settlement herein shall be subordinate to any claim of
19 the United States against such other party relating to the OII
20 Site, as provided by Section 113(f)(3)(C) of CERCLA, 42 U.S.C.
21 § 9613(f)(3)(C). The United States shall have priority over the
22 Defendants in the collection of any judgment obtained against any
23 non-settling party.

24
25 **IX. Dispute Resolution**

26 A. Unless otherwise expressly provided for in this Consent
27 Decree, the dispute resolution procedures of this Section shall
28 be the exclusive mechanism to resolve disputes arising under or

1 with respect to this Consent Decree. However, the procedures set
2 forth in this Section shall not apply to actions by the United
3 States to enforce obligations of the Defendants that have not
4 been disputed in accordance with this Section.

5 B. Any dispute which arises under or with respect to this
6 Consent Decree shall in the first instance be the subject of
7 informal negotiations between the parties to the dispute. The
8 period for informal negotiations shall not exceed 20 days from
9 the time the dispute arises, unless it is modified by written
10 agreement of the parties to the dispute. The dispute shall be
11 considered to have arisen when one party sends the other parties
12 a written Notice of Dispute.

13 C. 1. In the event that the parties cannot resolve a
14 dispute by informal negotiations under the preceding Paragraph,
15 then the position advanced by EPA shall be considered binding
16 unless, within 10 days after the conclusion of the informal
17 negotiation period, the Defendant(s) invoke(s) the formal dispute
18 resolution procedures of this Section by serving on the United
19 States a written Statement of Position on the matter in dispute,
20 including, but not limited to, any factual data, analysis or
21 opinion supporting that position and any supporting documentation
22 relied upon by the Defendant(s).

23 2. Within fourteen (14) days after EPA's receipt of
24 Defendant('s)(s') Statement of Position, EPA will serve on the
25 Defendant(s) its Statement of Position, including, but not
26 limited to, any factual data, analysis, or opinion supporting
27 that position and all supporting documentation relied upon by
28 EPA.

1 D. Following service of EPA's Statement of Position on the
2 Defendant(s) pursuant to Paragraph IX.C.2, the Director of the
3 Superfund Division, EPA Region IX, will issue a final decision
4 resolving the dispute. The Superfund Division Director's
5 decision shall be binding on the Defendant(s) unless, within 15
6 days of receipt of the decision, the Defendant(s) file(s) with
7 the Court and serve(s) on the parties a notice of judicial appeal
8 setting forth the matter in dispute, the efforts made by the
9 parties to resolve it, the relief requested, and the schedule, if
10 any, within which the dispute must be resolved to ensure orderly
11 implementation of the Consent Decree. The United States may file
12 a response to Defendant(s)' notice of judicial appeal.

13 E. The Court shall adopt EPA's position unless the Court
14 determines that EPA's position is arbitrary and capricious or not
15 in accordance with the objectives of this Consent Decree.

16 F. The invocation of formal dispute resolution procedures
17 under this Section shall not extend, postpone or affect in any
18 way any obligation of the Defendant(s) under this Consent Decree
19 not directly in dispute, unless EPA or the Court agrees
20 otherwise. Stipulated penalties with respect to the disputed
21 matter shall continue to accrue but payment shall be stayed
22 pending resolution of the dispute. Notwithstanding the stay of
23 payment, stipulated penalties shall accrue from the first day of
24 noncompliance with any applicable provision of this Consent
25 Decree. However, stipulated penalties shall not accrue: (1)
26 with respect to a decision by the Director of the Superfund
27 Division, EPA Region IX, under Paragraph IX.D, during the period,
28 if any, beginning on the 21st day after the date that Defendants'

1 reply to EPA's Statement of Position is received until the date
2 that the Director issues a final decision regarding such dispute;
3 or (2) with respect to judicial review by this Court of any
4 dispute under this Section, during the period, if any, beginning
5 on the 31st day after the Court's receipt of the final submission
6 regarding the dispute until the date that the Court issues a
7 final decision regarding such dispute. In the event that the
8 Defendant(s) do(es) not prevail on the disputed issue, stipulated
9 penalties with accrued interest shall be assessed and paid as
10 provided in Section X (Stipulated Penalties).

11
12 **X. Stipulated Penalties**

13 A. A Defendant shall be liable for stipulated penalties
14 where EPA determines that: (1) there has been late or inadequate
15 payment by the Defendant pursuant to Section VII (Payments by
16 Defendants); or (2) the Defendant fails to comply with any other
17 requirement applicable to it under the terms of this Consent
18 Decree.

19 B. Amounts of stipulated penalties

20 1. The stipulated penalty for any late payment or
21 payment of less than the full amount due under Section VII
22 (Payments by Defendants) of this Consent Decree shall be \$25,000
23 per day.

24 2. The stipulated penalty for violation of any other
25 requirement under this Consent Decree shall be as set forth
26 below:

27 //

28 //

Period of Failure to Comply	Penalty per day per event
1st through 15th day	\$ 3,000
16th through 30th day	\$ 7,000
31st through 45th day	\$10,000
46th day and beyond	\$15,000

C. All penalties shall begin to accrue from the date on which a violation of this Consent Decree occurs and shall continue through the final day of the noncompliance, except as provided in Paragraph IX.F.

D. Following EPA's determination that a Defendant has failed to comply with a requirement of this Consent Decree, EPA may give the Defendant written notification of the same and describe the noncompliance. EPA may send the Defendant a written demand for the payment of the penalties. However, penalties shall accrue as provided in this Section regardless of whether EPA has notified the Defendant of a violation.

E. The dollar amounts specified for penalties are not subject to Section IX (Dispute Resolution).

F. Stipulated penalties under this Section shall be paid by certified check made payable to the Hazardous Substance Superfund, and shall be paid within thirty (30) days of receipt of the written demand for the payment of stipulated penalties, except as provided by Paragraph X.H. The check shall reference CERCLA Number 09-58 and Department of Justice Case Number 90-11-2-156-I, as well as the name and address of the Defendant(s) making payment. Failure to pay a stipulated penalty on time shall also constitute an event subject to stipulated penalties. The check shall be sent to:

1 U.S. Environmental Protection Agency, Region IX
2 Attention: Superfund Accounting
3 P.O. Box 360863M
4 Pittsburgh, PA 15251

5 G. A copy of the check and any transmittal letter with the
6 check, including identification of this Consent Decree and a
7 brief description of the triggering event, shall be sent to the
8 United States and the EPA as provided in Section XV (Notices).

9 H. Penalties shall continue to accrue as provided in
10 Paragraph IX.F during any dispute resolution period, but need not
11 be paid until the following:

12 1. If the dispute is resolved by agreement or by a
13 decision of EPA that is not appealed to this Court, accrued
14 penalties determined to be owing shall be paid to EPA within 15
15 days of the agreement or the receipt of EPA's decision or order;

16 2. If the dispute is appealed to this Court and the
17 United States prevails in whole or in part, the Defendant(s)
18 shall pay all accrued penalties determined by the Court to be
19 owed to EPA within 60 days of receipt of the Court's decision or
20 order, except as provided in Subparagraph 3 below;

21 3. If the District Court's decision is appealed by any
22 Party, Defendant(s), shall pay all accrued penalties determined by
23 the District Court to be owing to the United States into an
24 interest-bearing escrow account within 60 days of receipt of the
25 Court's decision or order. Penalties shall be paid into this
26 account as they continue to accrue, at least every 60 days.
27 Within 15 days of receipt of the final appellate court decision,
28 the escrow agent shall pay the balance of the account to EPA or
to Defendant(s) to the extent that they prevail.

I. If a Defendant fails to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well as interest. The Defendant shall pay Interest on the unpaid balance, which shall begin to accrue on the date payment is due.

J. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of a Defendant's or Defendants' violation of this Consent Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(1) of CERCLA, 42 U.S.C. § 9622(1). Provided, however, that the United States shall not seek civil penalties pursuant to Section 122(1) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of the Consent Decree.

K. No payments made under this Section shall be tax deductible for Federal or State tax purposes.

L. Separate penalties shall accrue simultaneously for separate violations of this Consent Decree.

M. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Consent Decree.

XI. Covenants Not to Sue by Plaintiffs

A. In consideration of the payments that will be made by the Defendants under the terms of this Consent Decree, and except

1 as specifically provided in Paragraphs XI.B, XI.C, and XI.E of
2 this Section, the United States covenants not to sue or to take
3 administrative action against Defendants pursuant to Sections 106
4 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607, and Section
5 7003 of RCRA, 42 U.S.C. § 6973, relating to the Site. These
6 covenants not to sue shall take effect upon the receipt by EPA of
7 the payments required by Section VII (Payments by Defendants).
8 These covenants not to sue are conditioned upon the satisfactory
9 performance by Defendants of their obligations under this Consent
10 Decree. These covenants not to sue extend only to the Defendants
11 and do not extend to any other person.

12 B. United States' pre-certification reservations.

13 Notwithstanding any other provision of this Consent Decree, the
14 United States reserves, and this Consent Decree is without
15 prejudice to, the right to institute proceedings in this action
16 or in a new action, or to issue an administrative order seeking
17 to compel Defendants (1) to perform further response actions
18 relating to the Site or (2) to reimburse the United States for
19 additional costs of response if, prior to issuance of the Final
20 Certification of Completion:

21 (i) conditions at the Site, previously unknown to EPA,
22 are discovered, or

23 (ii) information, previously unknown to EPA, is
24 received, in whole or in part,

25 and these previously unknown conditions or this information,
26 together with any other relevant information, indicate(s) that
27 the Remedial Action is not protective of human health or the
28 environment.

1 C. United States' post-certification reservations.

2 Notwithstanding any other provision of this Consent Decree, the
3 United States reserves, and this Consent Decree is without
4 prejudice to, the right to institute proceedings in this action
5 or in a new action, or to issue an administrative order seeking
6 to compel Defendants (1) to perform further response actions
7 relating to the Site or (2) to reimburse the United States for
8 additional costs of response if, subsequent to issuance of the
9 Final Certification of Completion:

10 (i) conditions at the Site, previously unknown to EPA,
11 are discovered, or

12 (ii) information, previously unknown to EPA, is
13 received, in whole or in part,

14 and these previously unknown conditions or this information,
15 together with other relevant information, indicate(s) that the
16 Remedial Action is not protective of human health or the
17 environment.

18 D. For purposes of Paragraph XI.B, the information and the
19 conditions known to EPA shall include only that information and
20 those conditions known to EPA as of the date the Final ROD was
21 signed and set forth in the Gas Control and Cover ROD and/or the
22 Final ROD for the Site and the administrative record supporting
23 the Gas Control and Cover ROD and/or the Final ROD. For purposes
24 of Paragraph XI.C, the information and the conditions known to
25 EPA shall include only that information and those conditions
26 known to EPA as of the date of the Final Certification of
27 Completion and set forth in the Gas Control and Cover ROD and/or
28 the Final ROD, the administrative record supporting the Gas

Control and Cover ROD and/or Final ROD, the post-ROD administrative record, and/or in any information received by EPA pursuant to the requirements of any Consent Decree or administrative order for the Site prior to issuance of the Final Certification of Completion.

E. General reservations of rights. The covenants not to sue set forth above do not pertain to any matters other than those expressly specified in Paragraph XI.A. The United States and the State reserve, and this Consent Decree is without prejudice to, all rights against Defendants with respect to all other matters, including, but not limited to, the following:

1. Claims based on a failure by Defendants to meet a requirement of this Consent Decree;

2. Liability arising from the past, present, or future disposal, release, or threat of release of Waste Materials outside of the Site;

3. Liability for future disposal of Waste Material at the Site, other than as provided in the Gas Control and Cover ROD and/or the Final ROD, or otherwise ordered by EPA;

4. Liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

5. Criminal liability; and

6. Liability for violations of federal or state law which occur during or after implementation of the Remedial Action.

F. Notwithstanding any other provision of this Consent Decree, the United States and the State retain all authority and

1 reserve all rights to take any and all response actions
2 authorized by law.

3 G. Except as provided in this Section, and subject to
4 Paragraph XI.E of this Section, the State and the California
5 Hazardous Substance Account covenant not to sue or take any
6 administrative action against the Defendants pursuant to Section
7 107 of CERCLA, 42 U.S.C. § 9607, or the California Hazardous
8 Substance Account Act, California Health & Safety Code §§ 25300
9 et seq., relating to the Site. This covenant not to sue shall
10 take effect upon the receipt of payments required by Section VII
11 (Payments by Defendants). This covenant not to sue is
12 conditioned upon complete and satisfactory performance by
13 Defendants of their obligations under this Consent Decree. This
14 covenant not to sue extends only to each Defendant and does not
15 extend to any other person.

16
17 **XII. Covenants by Defendants**

18 **A. Covenant Not to Sue the United States or the State.**

19 Subject to the reservations in Paragraph XII.C, Defendants hereby
20 covenant not to sue and agree not to assert any claims or causes
21 of action against the United States or the State with respect to
22 the Site or this Consent Decree, including, but not limited to:

23 1. any direct or indirect claims for reimbursement
24 from the Hazardous Substance Superfund (established pursuant to
25 the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA
26 Sections 106(b)(2), 107, 111, 112, 113, 42 U.S.C. §§ 9606(b)(2),
27 9607, 9611, 9612, 9613, or any other provision of law;

28 //

2. any direct or indirect claims for reimbursement from the Hazardous Waste Control Account, Hazardous Substance Account or the Hazardous Substance Cleanup Fund through Health & Safety Code Section 25375 or any other provision of law;

3. any claims against the State or the United States, including any department, agency or instrumentality of the State or the United States, under CERCLA Sections 107 or 113, 42 U.S.C. §§ 9607 or 9613, related to the Site, or

4. any claims arising out of response activities at the Site, including claims based on EPA's and the State's selection of response actions, oversight of response activities or approval of plans for such activities.

B. Covenant Not to Sue De Minimis Parties. The Defendants agree to waive all claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any person (i) whose liability to the Defendants with respect to the Site is based solely on CERCLA § 107(a)(3) or (4), and (ii) who arranged for the disposal, treatment, or transport for disposal or treatment, or accepted for transport for disposal or treatment, of a de minimis amount of hazardous substances, designated at this Site as less than 110,000 gallons of materials containing hazardous substances, except where EPA has determined that the hazardous substances contributed by such person are significantly more toxic or of significantly greater hazardous effect than other hazardous substances at the Site.

C. The Defendants reserve, and this Consent Decree is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States

Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on EPA's selection of response actions, nor the oversight or approval of the Defendants' plans or activities. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA.

D. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XIII. Effect of Settlement; Contribution Protection

A. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this decree may have under applicable law. Except as otherwise provided herein, each of the Parties

expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

B. The Parties agree, and by entering this Consent Decree this Court finds, that the Defendants are entitled, as of the effective date of this Consent Decree, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), for Matters Addressed in this Settlement.

C. The Defendants agree, with respect to any suit or claim for contribution brought by them for matters related to this Consent Decree, that they will notify the United States and the State in writing no later than 60 days prior to the initiation of such suit or claim.

D. The Defendants also agree that with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree they will notify the United States and the State in writing within 10 days of service of the complaint on them. In addition, Defendants shall notify the United States and the State within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial.

E. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Defendants shall not assert, and may not

maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XI (Covenants Not to Sue by Plaintiffs).

XIV. Access to and Retention of Records and Information

A. Each Defendant shall preserve and retain all documents, records and information now in the possession or control, or which come into the possession or control, of the Defendant (or its divisions, subsidiaries, or parent corporations and its employees, agents, accountants, contractors or attorneys) relating to the past or present physical characteristics or conditions of the Site; the nature and quantity of any substances disposed or otherwise placed at, on, or in the Site and the location(s) and manner of such disposal(s) or placement(s); or to any equipment, structures or materials remaining at the Site; including, but not limited to: sampling; analyses; chain of custody records; well and equipment locations; equipment blueprints, schematics, and specifications; manifests; trucking logs; receipts; reports; correspondence; and any other documents or information that fall within the scope of Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), regardless of any corporate document retention policy to the contrary, for ten (10) years after entry of this Consent Decree (hereinafter referred to as the "Document

Retention Period"). Defendants shall also instruct their employees, agents, accountants, contractors and attorneys to preserve all such documents, records, and information during the Document Retention Period.

B. After the conclusion of the Document Retention Period, Defendants shall notify the United States and the State at least 90 days prior to the destruction of any records, documents, or other information required to be retained pursuant to this Consent Decree. Upon request by the United States or the State at any time during or after the Document Retention Period, Defendant(s) shall deliver any such records, documents, or other information to EPA or the State. Defendants shall also make available to EPA and the State, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the Site.

C. Defendants may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiff(s) under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified the Defendant(s) that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), the public may be given access to such documents or information

1 without further notice to the Defendant(s). No claim of
2 confidentiality shall be made with respect to any data,
3 including, but not limited to, all sampling, analytical,
4 monitoring, hydrogeologic, scientific, chemical, or engineering
5 data, or any other documents or information evidencing conditions
6 at or around the Site,

7 D. The Defendant(s) may assert that certain documents,
8 records and other information are privileged under the attorney-
9 client privilege or any other privilege recognized by federal
10 law. If the Defendant(s) assert such a privilege, the
11 Defendant(s) shall provide the Plaintiff(s) with the following:
12 (1) the title of the document, record, or information; (2) the
13 date of the document, record, or information; (3) the name and
14 title of the author of the document, record, or information; (4)
15 the name and title of each addressee and recipient; (5) a
16 description of the subject of the document, record, or
17 information; and (6) the privilege asserted by Defendant(s).

18 However, no documents, reports or other information created or
19 generated pursuant to the requirements of the Consent Decree
20 shall be withheld on the grounds that they are privileged.

21 E. Each Defendant hereby certifies individually that, to
22 the best of its knowledge and belief, after thorough inquiry, it
23 has not altered, mutilated, discarded, destroyed or otherwise
24 disposed of any records, documents or other information relating
25 to its potential liability regarding the Site, nor to the
26 potential liability of any other party, since notification of
27 potential liability by the United States or the State or the
28 filing of suit against it regarding the Site, and that it has

1 fully complied with any and all EPA requests for information
2 pursuant to CERCLA Sections 104(e) and 122(e), 42 U.S.C.
3 §§ 9604(e) and 9622(e), and RCRA Section 3007, 42 U.S.C. § 6927.

4 F. The failure of any Defendant to preserve, retain, or
5 make available all records, documents, or other information as
6 required by this Section shall subject each such Defendant to the
7 stipulated penalties set forth in Section X (Stipulated
8 Penalties).

9 G. This Section shall not apply to exact duplicates.

10
11 **XV. Notices**

12 A. Whenever, under the terms of this Consent Decree,
13 written notice is required to be given or a report or other
14 document is required to be sent by one Party to another, it shall
15 be directed to the individuals at the addresses specified below,
16 unless those individuals or their successors give notice of a
17 change to the other parties in writing. All notices and
18 submissions shall be considered effective upon receipt, unless
19 otherwise provided. Written notice as specified herein shall
20 constitute complete satisfaction of any written notice
21 requirement of the Consent Decree with respect to the United
22 States, EPA, the State, and the Defendants, respectively.

23 B. The individuals to be notified are:

24 1. As to the United States:

25 Chief, Environmental Enforcement Section
26 Environment and Natural Resources Division
27 U.S. Department of Justice
28 P.O. Box 7611
Washington, D.C. 20044
Re: DJ #90-11-2-156-I

1 2. As to the EPA:

2 OII Project Enforcement Coordinator
3 Superfund Enforcement Response Section (H-7-1)
4 U.S. Environmental Protection Agency, Region IX
5 75 Hawthorne Street
6 San Francisco, CA 94105-3901

7 3. As to the State:

8 Department of Toxic Substances Control
9 Attention: OII Project Coordinator
10 Toxic Substances Control Program
11 1011 Grandview Avenue
12 Glendale, CA 91201

13 -and-

14 Dennis A. Ragen
15 Deputy Attorney General
16 State of California, Department of Justice
17 P.O. Box 85266
18 San Diego, CA 92186-5266

19 4. As to the Defendants:

20 Air Products and Chemicals, Inc.
21 Attention: David C. Keehn, Attorney
22 7201 Hamilton Blvd.
23 Allentown, PA 18195-1501

24 -and-

25 GSF Energy, L.L.C.
26 Attention: Jerrel Branson
27 3232 Bee Caves Road, Suite 300
28 Austin, TX 78746

29 **XVI. Modification**

30 Except as otherwise provided in this Decree, no modification
31 shall be made to this Consent Decree without written notification
32 to, and written approval of, the United States, the State, the
33 Defendants and the Court, or as ordered by the Court. Nothing in
34 this Decree shall be deemed to alter the Court's power to
35 supervise or approve modifications to this Consent Decree after
36 the date of entry.

1 **XVII. Lodging and Opportunity for Public Comment**

2 A. This Consent Decree shall be lodged with the Court for
3 a period of not less than thirty (30) days for public notice and
4 comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C.
5 § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves
6 the right to withdraw or withhold its consent if the comments
7 regarding the Consent Decree disclose facts or considerations
8 which indicate that the Consent Decree is inappropriate,
9 improper, or inadequate. Defendants consent to the entry of this
10 Consent Decree without further notice.

11 B. No Party shall be bound by modifications to this
12 Consent Decree without its prior written consent, and consent to
13 this Consent Decree is not consent to such modification.

14 C. If, for any reason, the Court should decline to approve
15 this Consent Decree in the form presented, this agreement is
16 voidable at the sole discretion of any Party, and the terms of
17 the agreement may not be used as evidence in any litigation
18 between the Parties.

19
20 **XVIII. Retention of Jurisdiction**

21 This Court retains jurisdiction over both the subject matter
22 of this Consent Decree and the Defendants for the duration of the
23 performance of the terms and provisions of this Consent Decree
24 for the purpose of enabling any of the Parties to apply to the
25 Court at any time for such further order, direction, and relief
26 as may be necessary or appropriate for the construction or
27 modification of this Consent Decree, or to effectuate or enforce
28 compliance with its terms, or to resolve disputes in accordance

1 with Section IX (Dispute Resolution) hereof, or for any further
2 relief as the interest of justice may require.

3
4 **XIX. Representative Authority & Service**

5 A. Each undersigned representative of the Defendants, and
6 each undersigned representative of the Plaintiffs, including the
7 Assistant Attorney General for the Environment and Natural
8 Resources Division of the Department of Justice, certifies that
9 he or she is fully authorized by the Party to enter into the
10 terms and conditions of this Consent Decree, and to execute and
11 legally bind such Party to this Consent Decree.

12 B. Each Defendant hereby agrees not to oppose entry of
13 this Consent Decree by this Court or to challenge any provision
14 of this Consent Decree unless the United States has notified the
15 Defendants in writing that it no longer supports entry of the
16 Consent Decree.

17 C. Each Defendant shall identify, on the attached
18 signature page, the name, address and telephone number of an
19 agent who is authorized to accept service of process by mail on
20 behalf of that Party with respect to all matters arising under or
21 relating to this Consent Decree. Defendants hereby agree to
22 accept service in that manner and to waive the formal service
23 requirements set forth in Rule 4 of the Federal Rules of Civil
24 Procedure and any applicable local rules of this Court,
25 including, but not limited to, service of a summons.

26 //

27 //

28 //

1 **XX. Effective Date**

2 The effective date of this Consent Decree shall be the date
3 upon which this Consent Decree is entered by the Court, except as
4 otherwise provided herein.

5
6 **XXI. Termination and Satisfaction**

7 Upon full payment of all its obligations under Section VII
8 (Payments by Defendants) of this Consent Decree, each Defendant
9 shall have satisfied its obligations relating to the Site, and
10 this Consent Decree shall be terminated as to that Defendant,
11 provided that the termination shall not alter any of the
12 following provisions of this Consent Decree: Section XI
13 (Covenants Not to Sue by Plaintiffs); Section XII (Covenants by
14 Defendants); Section XIII (Effect of Settlement; Contribution
15 Protection); Section XIV (Access to and Retention of Records and
16 Information); Section IX (Dispute Resolution); Section X
17 (Stipulated Penalties); and such other continuing rights and
18 obligations as are set forth in this Consent Decree.

19
20 **XXII. Section Headings**

21 The section headings set forth in this Consent Decree and
22 its table of contents are included for convenience of reference
23 only and shall be disregarded in the construction and
24 interpretation of any of the provisions of this Consent Decree.

25
26 **XXIII. Counterparts**

27 This Consent Decree may be executed and delivered in any
28 number of counterparts, each of which, when executed and

1 delivered, shall be deemed to be an original, but such
2 counterparts shall together constitute one and the same document.

3
4 SIGNED and ENTERED this ____ day of _____, 1997.

5
6 SEP 18 1997

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
JOHN G. DAVIES
United States District Judge

UNITED STATES DISTRICT JUDGE

1 FOR PLAINTIFF UNITED STATES OF AMERICA:

2
3
4 Lois J. Schiffer
LOIS J. SCHIFFER
5 Assistant Attorney General
Environment and Natural Resources Division
6 U.S. Department of Justice
Washington, D.C. 20530
7

Dated: 7/4/92

8 Robert D. Brook
9 ROBERT D. BROOK
10 Environmental Enforcement Section
Environment and Natural Resources Division
11 U.S. Department of Justice
P.O. Box 7611
12 Washington, D.C. 20044
13

Dated: 7/8/92

14 NORA A. MANELLA
15 United States Attorney

16 ~~_____
17 Assistant United States Attorney
18 Central District of California
1100 U.S. Courthouse
19 300 N. Los Angeles Street
20 Los Angeles, CA 90012~~
21
22
23
24
25
26
27
28

~~Dated: _____~~

1 FOR PLAINTIFF UNITED STATES OF AMERICA:
2
3

4 John Wise
JOHN WISE

Dated: 6.23.97

5 Deputy Regional Administrator
6 U.S. EPA Region IX
7 75 Hawthorne Street
San Francisco, California 94105-3901

8
9 Arthur L. Haubenstock
ARTHUR L. HAUBENSTOCK

Dated: 6/20/97

10 Assistant Regional Counsel
11 U.S. EPA Region IX
12 75 Hawthorne Street, M/S ORC-3
San Francisco, California 94105-3901
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 FOR PLAINTIFF STATE OF CALIFORNIA:

2
3
4 
5 HAMID SAEBFAR

Dated: 7/10/97

6 Chief, Site Mitigation Operations Branch
7 Southern California Region
8 California Department of Toxic Substances Control
9 1011 North Grandview Avenue
10 Glendale, California 91201

11
12 
13 DENNIS A. RAGEN

Dated: July 3, 1997

14 Deputy Attorney General
15 110 West "A" Street, Suite 1100
16 San Diego, California 92101
17
18
19
20
21
22
23
24
25
26
27
28

SIXTH CONSENT DECREE SIGNATURE PAGE

THE UNDERSIGNED PARTY enters into this Consent Decree relating to
the Operating Industries, Inc. (OII) Superfund Site.

SIGNATURE

DATE

James H. Agger

Senior Vice President, General Counsel
and Secretary

PRINTED NAME

Air Products and Chemicals, Inc.

(610) 481-7350

DEFENDANT

TELEPHONE NUMBER

7201 Hamilton Boulevard

(610) 481-8223

ADDRESS

FACSIMILE NUMBER

Allentown, Pennsylvania 18195-1501

CITY, STATE, ZIP CODE

Agent Authorized to Accept Service and Future Notices on
Behalf of Above-signed Party:

Name:	David C. Keehn
	[Please Type]
Title:	Attorney
Address:	7201 Hamilton Boulevard
	Allentown, Pennsylvania 18195-1501
Tel. Number:	(610) 481-7350
Fax Number:	(610) 481-8223

SIXTH CONSENT DECREE SIGNATURE PAGE

THE UNDERSIGNED PARTY enters into this Consent Decree relating to
the Operating Industries, Inc. (OII) Superfund Site.

SIGNATURE

DATE

Jerrel Branson
PRINTED NAME

TITLE

GSF Energy, L.L.C.
DEFENDANT

(512) 347-1441
TELEPHONE NUMBER

3231 Bee Caves Road, Suite 300
ADDRESS

(512) 347-1551
FACSIMILE NUMBER

Austin, Texas 78746
CITY, STATE, ZIP CODE

Agent Authorized to Accept Service and Future Notices on
Behalf of Above-signed Party:

Name: Jerrel Branson
[Please Type]

Title:

Address: 3232 Bee Caves Road, Suite 300
Austin, Texas 78746

Tel. Number: (512) 347-1441

Fax Number: (512) 347-1551

1
2 PROOF OF SERVICE

3 I am employed in the City of Washington, D.C. by the
4 U.S. Department of Justice; am over the age of 18 years; not a
5 party to this action herein; and my business address is P.O. Box
6 7611, Washington, D.C. 20044.

7 On September 10, 1997, I served the foregoing document
8 described as:

9 SIXTH PARTIAL-CONSENT DECREE

10 on the following parties:

11 David C. Keehn
12 Attorney
13 7201 Hamilton Boulevard
14 Allentown, PA 18195-1501

15 Jerrel Branson
16 3232 Bee Caves Road, Suite 300
17 Austin, TX 78746

18 I certify that a true copy thereof was served by U.S. Mail
19 in a sealed envelope with postage thereon, fully prepaid, except
20 as otherwise indicated, at Washington, D.C.

21 Executed on September 10, 1997, at Washington, D.C.

22
23
24
25
26
27
28

Darlene Lyons